

TRANSCO MATRIX

Issues	State-Chartered Non-Profit Corporation	State-Chartered For Profit Corporation	State Chartered Non-Profit Cooperative	Federally Chartered Corporation (For-profit Mixed Ownership)	Federal Wholly Owned Corporation (non-profit)
<u>Requirements for Formation:</u>	Formed under state non-profit corporation statute; formation requires only preparation and filing of articles or certificate.	Formed under state corporation or other applicable statute (e.g., L.L.C. statute); formation requires only preparation and filing of articles or certificate.	Formed under state cooperative statute; formation requires only preparation and filing of articles or certificate.	New federal legislation required, ¹ but legislation could incorporate provisions of state corporation or other entity (e.g., L.L.C.) statutes.	New federal legislation required. ²
<u>Permitted purposes and powers</u>	Governing statutes generally provide that entity may be formed for any lawful purpose and may exercise all powers necessary and convenient to effect its purposes, to extent not prohibited by law.	Governing statutes generally provide that entity may be formed for any lawful purpose and may exercise all powers necessary or convenient to carry out its business and affairs, to the extent not inconsistent with law.	Governing statutes generally provide that entity may be formed to engage in any lawful business and may exercise all powers necessary and convenient to effect its purposes, to the extent not prohibited by law.	Powers defined by applicable legislation and can be modified only by legislative amendment.	Powers defined by applicable legislation and can be modified only by legislative amendment.
<u>Mode of Participation Sale³ of Assets</u>					
▪ BPA	Congressional authorization required. ⁴ Resolve bond security. ⁵	Congressional authorization required. ⁴ Resolve bond security. ⁵	Congressional authorization required. ⁴ Resolve bond security. ⁵	Congressional authorization required. ⁴ Resolve bond security. ⁵	Congressional authorization required. Supply System bond security preserved if priority of payments, ratemaking and net-billing features preserved. ⁶
▪ Cooperatives	Authorizing votes by board and members required.	Authorizing votes by board and members required.	Authorizing votes by board and members required.	Authorizing votes by board and members required.	Authorizing votes by board and members required.
▪ Municipals	Tax-exempt transmission owner transmission financing would have to be replaced with taxable RTO financing. ⁷ Approval of customer-owners in popular election required unless RTO formed under	Tax-exempt transmission owner transmission financing would have to be replaced with taxable RTO financing. ⁷ Approval of customer-owners in popular election required.	Tax-exempt transmission owner transmission financing would have to be replaced with taxable RTO financing. ⁷ Approval of customer-owners in popular election required unless RTO formed under state	Unless otherwise provided for in enabling legislation, tax-exempt transmission owner transmission financing would have to be replaced with taxable RTO financing. ⁷ Approval of customer-owners in popular election required.	Unless otherwise provided for in enabling legislation,-exempt transmission owner financing would have to be replaced with taxable RTO financing. ⁷ Generally, publicly-owned utilities may sell assets to Federal gov't

Issues	State-Chartered Non-Profit Corporation	State-Chartered For Profit Corporation	State Chartered Non-Profit Cooperative	Federally Chartered Corporation (For-profit Mixed Ownership)	Federal Wholly Owned Corporation (non-profit)
<ul style="list-style-type: none"> IOUs 	<p>state Interlocal Cooperation Act.⁸</p> <p>Must receive fair market value of assets sold.⁹</p> <p>Various state regulatory approvals required</p>	<p>Must receive either fair market value of assets sold or stock in exchange for assets.¹⁰</p> <p>Various state regulatory approvals required.</p>	<p>Interlocal Cooperation Act.⁸</p> <p>Must receive fair market value of assets sold.⁹</p> <p>Various state regulatory approvals required.</p>	<p>Must receive either fair market value of assets sold or stock in exchange for assets.¹⁰</p> <p>Various state regulatory approvals required.</p>	<p>without voter approval.</p> <p>Must receive fair market value of assets sold.</p> <p>Various state regulatory approvals required.</p>
<ul style="list-style-type: none"> <u>Transfer of Control (TCA)</u>¹¹ <ul style="list-style-type: none"> BPA Cooperatives Municipals IOUs 	<p>Congressional authorization maybe required.¹²</p> <p>Potential constitutional issue¹³</p> <p>Third party debt and Supply System obligations can be addressed.¹⁴</p> <p>Authorizing votes by board and members required.¹⁵</p> <p>Legislative authorization or declaratory judgement action may be required to address potential delegation of authority issue.¹⁶</p> <p>Tax-exempt transmission owner transmission financing may have to be replaced with taxable transmission owner financing¹⁷</p> <p>Various state regulatory approvals required.</p>	<p>Congressional authorization may be required.¹²</p> <p>Potential constitutional issue.¹³</p> <p>Third-party debt and Supply System obligations can be addressed.¹⁴</p> <p>Authorizing votes by board and members required.¹⁵</p> <p>Legislative authorization or declaratory judgement action may be required to address potential delegation of authority issue.¹⁶</p> <p>Tax-exempt transmission owner transmission financing would have to be replaced with transmission owner taxable financing.¹⁷</p> <p>Various state regulatory approvals required.</p>	<p>Congressional authorization may be required.¹²</p> <p>Potential constitutional issue.¹³</p> <p>Third-party debt and Supply System obligations can be addressed.¹⁴</p> <p>Authorizing votes by board and members required.¹⁵</p> <p>Legislative authorization or declaratory judgement action may be required to address potential delegation of authority issue.¹⁶</p> <p>Tax-exempt transmission owner transmission financing would have to be replaced with taxable transmission owner financing.¹⁷</p> <p>Various state regulatory approvals required.</p>	<p>Congressional authorization may be required.¹²</p> <p>Potential constitutional issue.¹³</p> <p>Third-party debt and Supply System obligations can be addressed.¹⁴</p> <p>Authorizing votes by board and members required.¹⁵</p> <p>Legislative authorization or declaratory judgement action may be required to address potential delegation of authority issue.¹⁶</p> <p>Tax-exempt transmission owner transmission financing would have to be replaced with taxable transmission owner financing.¹⁷</p> <p>Various state regulatory approvals required.</p>	<p>Congressional authorization may be required.¹²</p> <p>No constitutional issue.</p> <p>Third-party debt and Supply System obligations can be addressed.¹⁴</p> <p>Authorizing votes by board and members required.¹⁵</p> <p>Legislative authorization or declaratory judgement action may be required to address potential delegation of authority issue.¹⁶</p> <p>Tax-exempt transmission owner transmission financing would have to be replaced with taxable transmission owner financing.¹⁷</p> <p>Various state regulatory approvals required.</p>

Issues	State-Chartered Non-Profit Corporation	State-Chartered For Profit Corporation	State Chartered Non-Profit Cooperative	Federally Chartered Corporation (For-profit Mixed Ownership)	Federal Wholly Owned Corporation (non-profit)
<u>Meets FERC Governance Standard</u> ¹⁸	Yes	Yes	Yes	Yes	Board members appointed by President; FERC has not ruled on the independence of this approach.
<u>FERC jurisdictional</u>	Yes	Yes	Yes, if no Rural Utilities Service financing.	Yes, to extent provided in legislation.	Yes, to extent provided in legislation.
<u>Rates: cost-based or performance-based?</u>	Cost-based	Either	Cost-based	Either	Cost-based
<u>Who bears risk of loss?</u>	Creditors and customers	Shareholders	Creditors and customers	Shareholders	Creditors and customers (unless otherwise provided in legislation).
<u>Capitalization</u>	Debt	Debt and equity	Debt	Debt and equity	Debt
<u>Who can vote for board members?</u>	Members (determined by corporate charter)	Shareholders FERC's <i>de minimis</i> rule will impose limitations on market participants. Government Corporation Control Act may prohibit BPA from being a shareholder. Publicly owned utility transmission owners could not participate in governance as shareholders because they cannot hold debt or equity securities.	Members (determined by corporate charter)	Shareholders FERC's <i>de minimis</i> rule will impose limitations on market participants. Publicly owned utility transmission owners could not participate in governance as shareholders because they cannot hold debt or equity securities.	Board members appointed by President.
<u>Condemnation Authority</u>	In most states under current law.	In most states under current law.	In most states under current law.	In most states under current law.	Yes, if authorized by federal legislative charter.
<u>NEPA Review Required</u> ▪ Initial transfer of assets or control ▪ Ongoing	Yes for BPA Initial BPA Programmatic	Yes for BPA Initial BPA Programmatic	Yes for BPA Initial BPA Programmatic	Yes for BPA. Initial BPA Programmatic Analysis	Yes for BPA (unless otherwise provided in legislative charter).

Issues	State-Chartered Non-Profit Corporation	State-Chartered For Profit Corporation	State Chartered Non-Profit Cooperative	Federally Chartered Corporation (For-profit Mixed Ownership)	Federal Wholly Owned Corporation (non-profit)
	Analysis needed to cover future RTO interconnection decisions; continuing federal environmental review needed for federal transmission line expansions.	Analysis needed to cover future RTO interconnection decisions; continuing federal environmental review needed for federal transmission line expansions	Analysis needed to cover future RTO interconnection decisions; continuing federal environmental review needed for federal transmission line expansions	needed to cover future RTO interconnection decisions; continuing federal environmental review needed for federal transmission line expansions	Yes, (unless otherwise provided in federal legislative charter).
<u>RTO Entity Subject to Income Taxes?</u>	No, if granted exemption from federal income taxes under Section 501(c)(3) or another section of the Internal Revenue Code.	Yes, RTO liable for income taxes	Likely ¹⁹	Yes, RTO liable for income taxes	No, unless otherwise provided in legislation.
<u>State and Local Taxation of Facilities</u> <ul style="list-style-type: none"> Assets transferred Application of property/leasehold excise taxes to facilities controlled through TCA Washington revenue taxes 	<p>Relatively minor or no sales taxes on transfers.</p> <p>Subject to property taxes.</p> <p>Depends on interpretation of ambiguous state tax rules.²⁰</p> <p>Without legislative change, RTO may incur a 3.873% PUT or a 1.5% B&O tax on gross RTO or TCA revenues taxed by Washington State.²¹</p>	<p>Relatively minor or no sales taxes on transfers.</p> <p>Subject to property taxes.</p> <p>Depends on interpretation of ambiguous state tax rules.²⁰</p> <p>Without legislative change, RTO may incur a 3.873% PUT or a 1.5% B&O tax on gross RTO or TCA revenues taxed by Washington State.²¹</p>	<p>Relatively minor or no sales taxes on transfers.</p> <p>Subject to property taxes.</p> <p>Depends on interpretation of ambiguous state tax rules.²⁰</p> <p>Without legislative change, RTO may incur a 3.873% PUT or a 1.5% B&O tax on gross RTO or TCA revenues taxed by Washington State.²¹</p>	<p>Relatively minor or no sales taxes on transfers.</p> <p>Subject to property taxes.</p> <p>Depends on interpretation of ambiguous state taxrules.²⁰</p> <p>Without legislative change, RTO may incur a 3.873% PUT or a 1.5% B&O tax on gross RTO or TCA revenues taxed by Washington State.²¹</p>	<p>Possible in lieu taxes (depending upon legislative charter).</p> <p>Depends on provisions of legislation that may be enacted by federal and state governments.</p> <p>Depends on provisions of legislation that may be enacted by federal and state governments.</p> <p>Depends on provisions of federal legislation that may be enacted.</p>
<u>Rights-of-Way</u> <ul style="list-style-type: none"> BPA Municipals 	<p>Potential restriction on RTO operation over Federal and Tribal Lands if assets transferred.²²</p>	<p>Potential restriction on RTO operation over Federal and Tribal Lands if assets transferred.²²</p>	<p>Potential restriction on RTO operation over Federal and Tribal Lands if assets transferred.²²</p>	<p>Potential restriction on RTO operation over Federal and Tribal Lands if assets transferred.²²</p>	<p>Potential restriction on RTO operation over Federal and Tribal Lands depends on provisions of individual rights-of-way documents.</p>

Issues	State-Chartered Non-Profit Corporation	State-Chartered For Profit Corporation	State Chartered Non-Profit Cooperative	Federally Chartered Corporation (For-profit Mixed Ownership)	Federal Wholly Owned Corporation (non-profit)
▪ IOUs					

w\larson\TRANSCOMatrix

1. Creation of a mixed federal/private corporation would require new federal legislation creating the new corporation. Such legislation would probably have to address, among other matters:
 - the respective rights of the federal executive branch and of private shareholders in the governance of the corporation;
 - identification of and transfer of BPA transmission assets to the corporation;
 - the form, terms and extent of consideration to the United States Treasury for the transferred transmission assets. While this model presupposes that the U.S. would take some form of equity interest in the new entity, it is possible that the U.S. could take some cash and a note or other debt interest in partial exchange for the transfer of its facilities. This model could invite a number of complex considerations regarding the exact financial stake the U.S. would take in the new entity;
 - offsetting protections to bondholders of BPA-backed generation facilities (including the three net billed Energy Northwest nuclear projects) in order to ameliorate the loss of the transmission assets and revenues now supporting the bonds. These protections might include legislation that would either avoid a refinancing of the obligations or would permit a debt restructuring at lower cost than would otherwise be the case under current law;
 - the scope of the functions and authorities of the entity;
 - while such a corporation would be non-governmental, Congress may nonetheless consider the application of federal statutes governing employment, information disclosure, environmental laws, procurement, etc., especially if the U.S. has a controlling interest; and
 - the nature of FERC regulation over the new corporation.
2. The federally wholly owned option would require new federal legislation creating the new agency or corporation. Such legislation would probably have to address, among other matters:
 - governance and control of the new federal entity;
 - identification of and transfer of BPA transmission assets and functions to the entity;
 - the form, terms and extent of consideration to the United States Treasury for the transferred transmission assets. While this model presupposes that the U.S. would take some form of equity interest in the new entity, it is possible that the U.S. could take some cash and a note or other debt interest in partial exchange for the transfer of its facilities. This model could invite a number of complex considerations regarding the exact financial stake the U.S. would take in the new entity;
 - assuring there is no diminution of the security for BPA's third party generating resource obligations, (including debt for the BPA-backed nuclear projects owned by Energy Northwest (Supply System) while shielding nonfederal transmission assets, or the former assets of nonfederal transmission owners, from being burdened by a spillover of BPA's power function costs, such as BPA fish costs and the costs of the BPA-backed Energy Northwest projects;
 - fiscal control of the new entity;
 - whether and the extent to which federal statutes governing employment, information disclosure, environmental laws, procurement, etc. now applicable to BPA should be extended to the new corporation;
 - the scope of the functions and authorities of the entity; and
 - the nature of FERC regulation over the entity.
3. A lease, rather than a TCA, might also be employed (1) if the transmission owner wanted to convey more control to the RTO than provided by a TCA or (2) in the case of IOU transmission owners, as an interim measure pending resolution of mortgage bond indenture restrictions prior to sale of the assets to the RTO. A lease by BPA would require legislative authorization. A lease by publicly-owned utilities would normally be subject to same public approval requirements as apply to sale of those facilities.
4. If BPA desired to transfer its transmission assets to this form of Transco, rather than to participate through execution of a TCA, additional federal legislation would be required. This legislation would probably need to address, among other matters:
 - identification of and transfer of BPA transmission assets to the Transco;
 - consideration required to be paid to the United States Treasury for the transferred transmission assets; and
 - in the case of a sale of the BPA transmission assets, offsetting protections to bondholders of BPA-backed nonfederal generation facilities, including the three net billed Energy Northwest (Supply System) nuclear projects, in order to ameliorate the loss of transmission assets and revenues now supporting such bonds. These protections could either avoid a refinancing of the obligations or could permit a debt restructuring at lower cost than would otherwise be the case under current law.
5. May require replacing BPA's third party bonds with new bonds secured solely with power revenues and rates.
6. Could be structured to avoid possible need to defease BPA's third party bonds.
7. If transmission assets financed with tax-exempt municipal bonds were sold to a private (i.e., non-governmental) RTO entity, whether for-profit or non-profit, the bonds would have to be refunded using taxable debt.

8. If the RTO were a nonprofit corporation or mutual corporation formed under a state Interlocal Cooperation Act, IOUs would be prohibited from being members of the corporation.
9. In the non-profit corporation, non-profit cooperative and the federal wholly owned forms of a Transco, IOU transmission assets could be acquired only through purchase for cash. In such case, the Boards of Directors of the IOUs would have a fiduciary obligation to shareholders to demand fair market value for the transmission assets, even if the fair market value were substantially in excess of current depreciated book value of such assets. (See notes immediately below.)
10. In the for-profit state-chartered corporation and mixed federal/private corporation forms of a Transco, IOUs, subject to federal and state taxation considerations, could transfer their transmission assets to this Transco for Transco voting or non-voting stock, or for cash. If the consideration were cash, however, the Boards of Directors of the IOUs would have a fiduciary duty to shareholders to demand fair market value for the transmission assets, even if the fair market value were substantially in excess of the depreciated book value of such assets. (An excess fair market value cash payment would trigger the need for the Transco to seek an “acquisition adjustment” that would increase transmission rate base, if the cost of the additional cash consideration were to be recovered. In a stock exchange, however, there would be no change in the book value of the assets and thus no need to change the transmission rate base. Instead, through the exchange for Transco stock, the transmission owners would continue to receive value for the transmission assets through Transco stock dividends, or could transfer such continuing rights to others by disposing of the Transco stock.)
11. This mode of participation envisions the Transco operating the particular facilities as an ISO.
12. The members of the RTO legal committee did not reach consensus as to whether any legislation would be required for BPA to transfer, through a Transmission Control Agreement with an ISO or with a Transco, sufficient control of the federal transmission system to meet FERC’s independence requirement. The members did agree that explicit Congressional authorization would be helpful in defending any challenges to BPA’s participation while some believe that such legislation is essential to BPA’s participation.
13. There may be constitutional issues associated with executive delegation and executive appointments authorities. These issues may be resolved by legislation which either eliminates BPA’s statutory responsibilities regarding the transmission facilities or suspends them while the BPA facilities are operated by the RTO.
14. To preserve the rights of BPA’s third party debt holders and of the net-billed participants, (a) BPA needs to retain the ability to set its revenue requirement to recover its costs; (b) net-billing participants must continue to be net-billed; and (c) possibly payments for RTO transmission services will need to be made to a payment agent for BPA and other transmission providers, rather than to the RTO.
15. Under Section 501(c)(12) of the Internal Revenue Code, in order for a cooperative to maintain tax-exempt status in any year, not less than 85 percent of the gross income of the cooperative in such year must come from the members of the cooperative. Under current law, therefore, if a cooperative transferring ownership or operational control of its transmission facilities to an RTO wished to maintain the cooperative’s tax-exempt status, the RTO would be required to be a member of the cooperative (or, alternatively, no more than 15 percent of the gross income of the cooperative would be permitted to be derived from revenues received from the RTO). Pending federal legislation would permit an electric cooperative providing open access transmission service (including under an RTO tariff) to maintain tax-exempt status under Section 501(c)(12) without regard to the amount of transmission revenue derived from non-members of the cooperative.
16. Statutory and constitutional limitations may apply to the authority of a municipal or PUD transmission owner to delegate its powers to another entity.
17. Although under a TCA arrangement the ownership of transmission facilities of publicly owned utilities would remain unchanged, those facilities would be ineligible for continued tax-exempt financing if either: (1) proceeds from use of the facilities by private entities exceeded 10% of the total proceeds from such use, as provided in Section 141 of the Internal Revenue Code; or (2) the TCA violated the management contract provisions of Section 1301(e) of the Internal Revenue Code. Temporary regulations, which expire in January 2001, are currently in place to provide relief from these rules for municipal facilities involved in FERC-ordered wheeling transactions. Legislation is also under consideration which would permanently resolve these issues with respect to transmission facilities.
18. Met either with independent board (board members do not represent individual classes or members) or representative board (board members are elected under a system in which no individual market participant or class of participants can control decisionmaking).
19. Under Section 501(c)(12) of the Internal Revenue Code, in order for a cooperative to maintain tax-exempt status in any year, not less than 85 percent of the gross income of the cooperative in such year must come from the members of the cooperative. An RTO formed as a cooperative could not satisfy this requirement unless effectively all of the RTO’s transmission customers were members of the RTO. As a practical matter, therefore, relief from the limitations of Section 501(c)(12) would be required in order for a cooperative corporation to maintain tax-exempt status while serving as the RTO entity. Pending federal legislation would permit an electric cooperative providing open access transmission service (including under an RTO tariff) to maintain tax-exempt status under Section 501(c)(12) without regard to the amount of transmission revenue derived from non-members of the cooperative.
20. IOU assets already taxed. In various Northwest states, the RTO may be at risk of incurring property taxes or property-like taxes (property taxes, beneficial use taxes, leasehold excise taxes) assessed on the value of BPA or publicly-owned transmission assets controlled pursuant to TCAs and not now taxed. State legislation is desirable to address issues related to property-like taxes.
21. Proposed changes related to this public utility tax and related business and occupation taxes are before the Washington legislature in the current legislative session, which ends in March 2000.
22. Not considered a problem with a TCA.